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SECOND COMMITTEE

Formulation of main trends

INTRODUCTION

The sole purpose of this informal working paper is to reflect in generally acceptable formulations the main trends which have emerged from the proposals submitted either to the United Nations Sea-Bed Committee or to the Conference itself.

The fact of including these formulations does not imply any opinion on the degree of support they have commanded either in the preparatory stage or in the proceedings of the current session of the Conference. It does not imply either that all the proposals from which these formulations have been taken have been the subject of discussion. The inclusion of a provision in this paper, whether or not only one formula appears, does not necessarily imply that there are no other opinions concerning these questions or that all or most delegations agree on the necessity for such a provision.

All the proposals submitted to the United Nations Sea-Bed Committee and to the Conference are maintained and may be considered by this Committee at any time. Thus, the preparation of this document and its acceptance by the Committee as a working paper in no way signifies that these proposals have been withdrawn. There is no question of taking any decisions at the present stage, in accordance with the method of work adopted by the Committee at its meeting on 3 July, once this task has been carried out, the item will be "frozen" and the Committee will pass on to the next item. No decision has to be taken until all the closely interrelated items have been thoroughly discussed.

Since the purpose of this paper is to focus the discussion of each of the items on the fundamental issues, leaving until later the consideration of supplementary rules and drafting points, the paper does not include all the proposals appearing in volume III of the report of the Sea-Bed Committee or all the variants, many of which reflect only drafting changes, appearing in volume IV of the same report.

In submitting this paper, the Bureau considers it necessary to stipulate that the inclusion both of provisions using the term "high seas" and provisions using the term "international sea", under item 8 (high sea), does not prejudice the position of delegations as to the use of either term.

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PROVISION I

8 High Seas

8.1 Nature and characteristics

PROVISION I

Formula A

The term "high seas" means all parts of the sea that are not included in the territorial sea or in the internal waters of a State.

Formula B

The waters situated beyond the outer limits of the patrimonial sea - economic zone - constitute an international area designated as high seas.

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Formula C

The term "international seas" shall denote that part of the sea which is not subject to the sovereignty and jurisdiction of coastal States.

Formula D

The term "high seas" means all parts of the sea that are not included in the internal waters, the territorial sea or the exclusive economic zone of a State.

PROVISION II

Formula A

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty.

Formula B

The international sea area and its resources are, in principle, jointly owned by the people of all countries.

Formula C

The international seas shall be open to all States, whether coastal or land-locked, and their use shall be reserved for peaceful purposes.

8.2 Rights and duties of States

PROVISION III

Formula A

The coastal State shall enjoy preferential rights to exploit living resources in a sector of the sea adjacent to the zone under its sovereignty and jurisdiction, and may reserve to itself or its nationals a part of the permissible catch of such resources.

Formula B

Subject to the articles ... (management and conservation of the living resources of the high seas), all States shall have the right to allow their nationals to engage in the exploitation of the fishery resources of the sea

PROVISION IV

Every State, whether coastal or not, has the right to sail ships under its flag on the high seas.

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PROVISION V

1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2. Each State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

PROVISION VI

1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

PROVISION VII

1. Every State is obliged effectively to exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2. In particular, the flag State shall, in addition to its obligations under article ..., take the following action in respect of ships flying its flag:

(a) maintain a Register of shipping containing the names and particulars of ships flying its flag;

(b) cause each such ship, before registration and thereafter at the intervals prescribed by international regulations, to be surveyed by a qualified surveyor of ships;

(c) ensure that each such ship is in the charge of a Master and Officers who possess appropriate qualifications, in particular in seamanship, navigation and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size and equipment of the ship;

(d) ensure that each such ship has on board adequate charts, nautical publications and navigational equipment and instruments appropriate for the safe navigation of the ship;

(e) cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or, serious damage to shipping or installations of another State, or to the marine environment;

(f) assume jurisdiction under its municipal law over each ship and over the master, officers and crew in respect of administrative, technical and social matters concerning the ship; and

(g) take the necessary measures to ensure that the master and officers are fully conversant with and are required to observe the appropriate applicable international regulations concerning the safety of life at sea, the prevention and control of marine pollution, the prevention of collisions and the maintenance of communications by radio.

Without prejudice to paragraph 1 of this article, the requirements of this paragraph do not apply to ships or boats which are excluded from generally accepted international regulations on account of their small size.

3. The flag State, in taking measures required under paragraph 2 above shall conform to generally accepted international regulations, procedures and practices.

4. A State which has reasonable grounds to suspect that proper jurisdiction and control has not been exercised in accordance with this Convention may report the facts to the flag State and request it to investigate the matter further. Upon receiving such a request, the flag State shall investigate the matter, taking any action necessary to remedy the situation and notify the requesting State of the action taken.

5. The flag State shall co-operate in the conduct of any inquiry held in another State into any marine casualty or incident of navigation causing loss of life or serious injury to nationals or damage to ships or other installations of that other State, or to the marine environment.

PROVISION VIII

The provisions of the preceding articles do not prejudice the question of ships employed on the official service of an intergovernmental organization flying the flag of the organization.

PROVISION IX

1. Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

2. (See Provision XLII, paragraph 1 in Informal Working Paper No. 1/Rev.2*.)

PROVISION X

Ships owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State.

PROVISION XI

1. Every State shall take such measures for ships under its flag as are necessary to ensure safety at sea with regard inter alia to:

(a) the use of signals, the maintenance of communications and the prevention of collisions;

(b) the manning of ships and labour conditions for crews taking into account the applicable international labour instruments;

(c) the construction, equipment and seaworthiness of ships.

2. In taking such measures each State is required to conform to generally accepted international standards and to take any steps which may be necessary to ensure their observance.

3. A State which has reasonable grounds for suspecting that such measures have not been taken may report the facts to the flag State and request it to investigate the matter further. Upon receiving such a request, the flag State shall investigate the matter, take any action necessary to remedy the situation and notify the requesting State of the action taken.

PROVISION XII

1. In the event of a collision or of any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such persons except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

2. In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or licence shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.

3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

PROVISION XIII

1. Every State shall require the master of a ship sailing under its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:

(a) to render assistance to any person found at sea in danger of being lost;

(b) to proceed with all possible speed to the rescue of persons in distress if informed of their need of assistance, in so far as such action may reasonably be expected of him;

(c) after a collision, to render assistance to the other ship, her crew and her passengers and, where possible, to inform the other ship of the name of his own ship, her port of registry and the nearest port at which she will call.

2. Every coastal State shall promote the establishment and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and - where circumstances so require - by way of mutual regional arrangements co-operate with neighbouring States for this purpose.

PROVISION XIV

All States shall be obliged to comply with international regulations designed to prevent, reduce or eliminate any damage or risks arising from pollution or other effects detrimental or dangerous to the ecological system of the international seas, water quality and use, living resources and human health.

PROVISION XV

1. All States shall be entitled to lay submarine cables and pipelines on the bed of the high seas.

2. Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of such cables or pipelines.

3. When laying such cables or pipelines the State in question shall pay due regard to cables or pipelines already in position on the sea-bed. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

PROVISION XVI

Every State shall take the necessary legislative measures to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable shall be a punishable offence. This provision shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

PROVISION XVII

Every State shall take the necessary legislative measures to provide that, if persons subject to its jurisdiction who are the owners of a cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline they shall bear the cost of the repairs.

PROVISION XVIII

Every State shall take the necessary legislative measures to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline, shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures before and

8.3 Question of the freedoms of the high seas and their regulation

PROVISION XIX

Formula A

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, inter alia, both for coastal and non-coastal States:

- (1) freedom of navigation;
- (2) freedom of fishing;
- (3) freedom to lay submarine cables and pipelines;
- (4) freedom to fly over the high seas.

These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.

Formula B

1. The following freedoms shall be exercised on the international seas:

- (1) ... (same as in Formula A, (1))
- (2) ... (" " (4))
- (3) ... (" " (3))

(4) freedom to emplace artificial islands and other installations permitted under international law, without prejudice to the provisions of article ...;

(5) freedom of fishing, subject to the conditions laid down in article ...;

(6) freedom of scientific research, subject to the conditions laid down in paragraph 2.

These freedoms shall be exercised by any State, with due consideration for the interests of other States in the exercise of the same freedom.

2. Scientific research in the international seas shall be open to any State and shall be promoted and facilitated under forms of co-operation and assistance which permit the participation of all States, irrespective of their level of development or of whether they are coastal or land-locked.

... (Complementary provisions on scientific research)

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Formula C

Uses of the international sea area shall not prejudice the legitimate interests of other States and the common interests of all States.

8.4 Management and conservation of living resources

PROVISION XX

The coastal State has a special interest in maintaining the productivity of the living resources of the sea in an area adjacent to the patrimonial sea.

PROVISION XXI

Formula A

1. Fishing in the international sea area shall be properly regulated to prohibit indiscriminate fishing and other violations of rules and regulations for the conservation of fishery resources.
2. Pending the establishment of a unified international fishery organization, States of a given sea area may set up a regional committee to work out appropriate rules and regulations for the regulation of fishing and the conservation of marine living resources in the international sea area. Fishing vessels of States of other regions may enter the said region for fishing activities provided they comply with the relevant rules and regulations of the region.

Formula B

1. Fishing and hunting in the international seas shall be subject to regulations of a world-wide and regional nature.
2. The aforesaid activities shall be carried out by techniques and methods which do not jeopardize adequate conservation of the renewable resources of the international seas.

Formula C

States shall co-operate with each other in the exploitation and conservation of living resources in areas beyond the economic zone of coastal States. States exploiting identical resources, or different resources located in the same area, shall enter into fisheries management agreements, and establish appropriate multilateral fisheries organizations, for the purpose of maintaining these resources. If such a body cannot be constituted among the concerned States, they may ask for the assistance of the Food and Agriculture Organization of the United Nations in establishing an appropriate regional or international regulatory body.

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States, acting individually and through regional and international fisheries organizations, have the duty to apply the following conservation measures for such living resources:

(A) allowable catch and other conservation measures shall be established which are designed, on the best evidence available to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, taking into account relevant environmental and economic factors, and any generally agreed global and regional minimum standards;

(B) such measures shall take into account effects on species associated with or dependent upon harvested species and at a minimum, shall be designed to maintain or restore populations of such associated or dependent species above levels at which they may become threatened with extinction;

(C) for this purpose, scientific information, catch and fishing effort statistics, and other relevant data shall be contributed and exchanged on a regular basis;

(D) conservation measures and their implementation shall not discriminate in form or fact against any fisherman. Conservation measures shall remain in force pending the settlement, in accordance with the provisions of chapter ____, of any disagreement as to their validity.

With respect to anadromous species and highly migratory species, the provisions of article ____ and article ____, respectively, shall apply.

PROVISION XXII

Formula A

In respect of fisheries of highly migratory habits outside the limits of the exclusive fishery zone, regulations for their exploration, exploitation, conservation and development shall be made by the authority designated for the purpose by the Conference on the Law of the Sea.

Formula B

(See Provision XXVIII, Formula A of Informal Working Paper No. 4/Rev.1)

Formula C

(See Provision XXVIII, Formula B of Informal Working Paper No. 4/Rev.1)

PROVISION XXIII

With regard to the living resources of an area of the sea situated beyond the limits of the zones of sovereignty and jurisdiction of two or more States, which breed, feed and live by reason of the resources of that area, the States concerned may agree among themselves on appropriate regulations for the exploration, conservation and exploitation of such resources.

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PROVISION XXIV

1. Regulations adopted to regulate fishing and hunting in the international seas shall ensure the conservation and rational utilization of living resources and the equitable participation of all States in their exploitation, with due regard to the special needs of developing coastal countries and land-locked countries.
2. Such regulations shall establish conditions and methods of fishing and hunting which prevent the indiscriminate exploitation of species and avert the danger of their extinction.

PROVISION XXV

Formula A

Where a State has good reason to believe that vessels of the flag of another State have violated fishing and hunting regulations applicable to the international seas, the former State may request the flag State to take the necessary steps to punish those responsible.

Formula B

(See Provision XXX, Formula B of Informal Working Paper No. 4/Rev.1)

PROVISION XXVI

Formula A

The exploitation of anadromous species shall be regulated by agreement among interested States or by international arrangements through the appropriate intergovernmental fisheries organization.

All interested States shall have an equal right to participate in such arrangements and organizations. Any arrangement shall take into account the interest of the State of origin and the interests of other coastal States.

Formula B

The right of exploitation of stocks of anadromous species shall be exercised only:

- (i) within waters under the jurisdiction of the State of origin;
- (ii) within waters under the jurisdiction of other coastal States, subject to such conditions and regulations as shall be agreed between such coastal State and the State of origin, taking into account the special role of the State of origin in the conservation of the species.

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Formula C

(See Provision XXVI, Formula D in Informal Working Paper No. 4/Rev.1)

PROVISION XXVII

(See Provision XXVI, Formula B in Informal Working Paper No. 4/Rev.1)

PROVISION XXVIII

(See Provision XXIX of Informal Working Paper No. 4/Rev.1)

8.5 Slavery, piracy and drugs

PROVISION XXIX

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters a foreign merchant ship on the high seas is not justified in boarding her unless there is reasonable ground for suspecting:

(a) that the ship is engaged in piracy; or

(b) that the ship is engaged in the slave trade; or

(c) that, though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

2. In the cases provided for in subparagraphs (a), (b) and (c) above, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

PROVISION XXX

Every State shall adopt effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag, and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall, ipso facto, be free.

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PROVISION XXXI

All States shall co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

PROVISION XXXII

Piracy consists of any of the following acts:

(1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(2) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(3) Any act of inciting or of intentionally facilitating an act described in subparagraph 1 or subparagraph 2 of this article.

PROVISION XXXIII

The acts of piracy, as defined in article ..., committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship.

PROVISION XXXIV

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article ... The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

PROVISION XXXV

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

PROVISION XXXVI

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board.

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The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

PROVISION XXXVII

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft, for any loss or damage caused by the seizure.

PROVISION XXXVIII

A seizure on account of piracy may only be carried out by warships or military aircraft, or other ships or aircraft on government service authorized to that effect.

PROVISION XXXIX

Formula A

1. All States shall co-operate in the suppression of illicit traffic in narcotic drugs by ships on the high seas, contrary to international conventions.
2. Any State which has reasonable grounds for believing that a vessel is engaged in illicit traffic in narcotic drugs may, whatever the nationality of the vessel but provided that its tonnage is less than 500 tons, seize the illicit cargo. The State which carried out this seizure shall inform the State of nationality of the vessel in order that the latter State may institute proceedings against those responsible for the illicit traffic.
3. Any State which has reasonable grounds for believing that a vessel flying its flag is engaged in illicit traffic in narcotic drugs, may request the co-operation of another State to put an end to this.

Formula B

... (Same as formula A, except instead of narcotic drugs insert "narcotic and psychotropic drugs".)

8.6 Hot pursuit

PROVISION XL

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters or the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial

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sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article ..., the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own country or of a third State.

3. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship are within the limits of the territorial sea, or as the case may be within the contiguous zone. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

4. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft on government service specially authorized to that effect.

5. Where hot pursuit is effected by an aircraft:

(a) The provisions of paragraphs 1 to 3 of this article shall apply mutatis mutandis;

(b) The aircraft giving the order to stop must itself actively pursue the ship until a ship or aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest on the high seas that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.

6. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the high seas, if the circumstances rendered this necessary.

7. Where a ship has been stopped or arrested on the high seas in circumstances which do not justify the exercise of the rights of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

PROVISION XLI

Formula A

The right of hot pursuit shall apply, mutatis mutandis, to violations in the economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in

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accordance with this Convention to the economic zone or the continental shelf, including such safety zones.

Formula B

The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters or the territorial sea or the economic zone of the pursuing State, and may only be continued outside the territorial sea or the economic zone if the pursuit has not been interrupted.

The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea or the economic zone of its own country or the territorial sea or the economic zone of a third State.

Item 24. Transmission from the high seas

PROVISION I

1. All States shall co-operate in the repression of unauthorized broadcasting from the high seas.
2. "Unauthorized broadcasting" consists of the transmission of sound radio or television broadcasts from a ship or installation on the high seas intended for reception by the general public contrary to international regulations, but excluding the transmission of distress calls.
3. Any person engaged in unauthorized broadcasting from the high seas may be prosecuted before the Court of the flag State of the vessel, the place of registry of the installation, the State of which the person is a national, any place where the transmissions can be received or any State where authorized radio communication is suffering interference.
4. On the high seas, any of the States having jurisdiction in accordance with paragraph 3 above may, in conformity with article ... below, arrest any person, or ship engaged in unauthorized broadcasting and seize the broadcasting apparatus.
